

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alexander Schiavo	Team: Team # 4	CCRB Case #: 201210050	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 08/03/2012 12:30 PM	Location of Incident: Riverdale Avenue between Thatford Avenue and Osborn Street	Precinct: 73	18 Mo. SOL 2/3/2014	EO SOL 2/3/2014	
Date/Time CV Reported Mon, 08/06/2012 9:00 AM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Mon, 08/06/2012 9:00 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. CPT Joseph Gulotta	00000	900369	073 PCT
2. LT John Hopkins	00000	904167	073 PCT
3. POM Joel Rosenthal	23138	946197	073 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. LT Martha Rizzo	00000	920921	073 PCT
2. DT3 Nancy Malota	07026	896360	073 DET
3. POM Scott Walicki	19252	935944	073 PCT
4. POM Christophe Furegno	12784	934891	073 PCT
5. SGT Anthony Armistead	00310	927875	073 PCT

Officer(s)	Allegation	Investigator Recommendation
A.CPT Joseph Gulotta	Abuse: Capt. Joseph Gulotta detained § 87(2)(b) and § 87(2)(b)	
B.POM Joel Rosenthal	Discourtesy: PO Joel Rosenthal spoke discourteously to § 87(2)(b)	
C.POM Joel Rosenthal	Abuse: PO Joel Rosenthal searched § 87(2)(b)	
D.LT John Hopkins	Abuse: Lt. John Hopkins refused to provide his name to § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

Case Summary

On August 6, 2012, § 87(2)(b) and § 87(2)(b) filed their complaint at the CCRB in person (encl. 14-15a). On August 3, 2012, at approximately 12:30 p.m., Capt. Joseph Gulotta, PO Joel Rosenthal, Lt. John Hopkins, and Lt. Martha Rizzo of the 73rd Precinct approached § 87(2)(b) and § 87(2)(b) who were inside of § 87(2)(b)'s parked vehicle, on Riverdale Avenue between Thatford Avenue and Osborn Street in Brooklyn. The following allegations resulted from the officers' actions:

- **Allegation A – Abuse of Authority:** Capt. Joseph Gulotta detained § 87(2)(b) and § 87(2)(b). § 87(2)(b), § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
- **Allegation B – Discourtesy:** PO Joel Rosenthal spoke discourteously to § 87(2)(b)
- **Allegation C – Abuse of Authority:** PO Joel Rosenthal searched § 87(2)(b)
- **Allegation D – Abuse of Authority:** Lt. John Hopkins refused to provide his name to § 87(2)(b). § 87(2)(b), § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
- § 87(4-b), § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

On August 6, 2012, § 87(2)(b) rejected mediation.

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- § 87(2)(b)
§ 87(2)(b)

CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB as a walk-in on August 6, 2012 (encl. 16-20). He also provided a written account of his complaint (encl. 15b-e). On August 22, 2012, § 87(2)(b) provided additional details via telephone, and these details have been included in the summary below (encl. 21). On August 3, 2012, at approximately 12:30 p.m., § 87(2)(b) was driving home from a doctor's appointment in his white 2007 Volkswagen Jetta sedan with New York plates on Riverdale Avenue between Osborn Street and Thatford Avenue in Brooklyn. He spotted his cousin, § 87(2)(b) sitting alone on a park bench. § 87(2)(b) parked his car against the curb across the street from § 87(2)(b). § 87(2)(b) did not recall if there was a fire hydrant near the spot or whether he was parked legally. § 87(2)(b) got into the passenger seat. They sat in the car and spoke for about 10 minutes, after which a black SUV pulled up nose-to-nose with § 87(2)(b)'s car.

Four plainclothes officers, three males and one female, got out of the SUV. These officers were identified through the investigation as Capt. Gulotta, Lt. Hopkins, Lt. Rizzo, and PO Rosenthal. PO Rosenthal was described as a 37-year-old white male who was 5'8" tall, weighed 240 pounds, and had black hair. Capt. Gulotta was described as a white male in his late 30s who

was 5'8" tall, weighed 200 pounds, and had black hair. Lt. Hopkins was described as a white male in his early 40s who was 5'9" tall, weighed 210 pounds, and had black hair. Lt. Rizzo was described as a white female in her early 30s who was 5'0" tall, weighed 115 pounds, and had blond hair. PO Rosenthal and Capt. Gulotta approached § 87(2)(b)'s driver's side and Lt. Rizzo and Lt. Hopkins approached § 87(2)(b)'s passenger side. PO Rosenthal asked for § 87(2)(b)'s license, registration, and insurance card. § 87(2)(b) turned to get the documents out of the center console. At that point, PO Rosenthal and Capt. Gulotta opened the door, removed § 87(2)(b) from the vehicle by the arm, and handcuffed him. Without being asked, § 87(2)(b) exited the car to stand and watch from the passenger's side. § 87(2)(b) asked the officers what they were doing. He was yelling, but did not use any profanity. PO Rosenthal responded, "Shut the fuck up."

PO Rosenthal removed § 87(2)(b)'s wallet from his rear pocket, and removed his license and transit identification from the wallet. PO Rosenthal then put § 87(2)(b)'s transit identification back in the wallet and placed the wallet back in § 87(2)(b)'s rear pocket. PO Rosenthal walked away from § 87(2)(b) still holding his license, and placed a call on his cell phone. Capt. Gulotta followed PO Rosenthal, while Lt. Rizzo and Lt. Hopkins came to the driver's side of the car. § 87(2)(b) protested his detainment, but Lt. Hopkins asked him to be calm and to understand that a white Jetta had been implicated in a shooting five days prior to the incident about three blocks away. § 87(2)(b) responded that he knew about the crime because he lives in the neighborhood, but he had nothing to do with it.

Sgt. Anthony Armistead, whom § 87(2)(b) identified from his nameplate, arrived in a marked car and transported § 87(2)(b) to the 73rd Precinct stationhouse. An unknown officer drove § 87(2)(b)'s car to the stationhouse. § 87(2)(b) who was never handcuffed, was brought to the stationhouse in a separate marked car. § 87(2)(b) did not know what happened to § 87(2)(b) at the stationhouse. § 87(2)(b) remained in a cell for approximately 10 minutes before a female detective, identified through the investigation as Det. Nancy Malota of the 73rd Precinct detective squad, brought him to a separate room where she asked him a number of questions about the shooting and acknowledged that the responding officers had overreacted. After § 87(2)(b) was questioned, he was released without being arrested or summonsed. He saw § 87(2)(b) in the front of the stationhouse, and the two men left the stationhouse in § 87(2)(b)'s car.

Complainant/Victim: § 87(2)(b)

- § 87(2)(b)

CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB as a walk-in on August 6, 2012 (encl. 22-26). He corroborated § 87(2)(b)'s account of the beginning of the incident. § 87(2)(b) parked his car approximately 10 feet in front of a fire hydrant. § 87(2)(b) described PO Rosenthal as a white male in his late 20s who was 6'2" tall, weighed 250 pounds, and had brown hair. Capt. Gulotta was described as a white male in his mid-30s was 5'9" tall and had a medium build. Lt. Hopkins was described as a white male in his late 30s who was 6'0" tall, had a heavy build, and salt and pepper hair. Lt. Rizzo was described as a white female in her late 20s who was 5'6"-5'7" tall, had a thin build, and blond hair. After PO Rosenthal asked § 87(2)(b) for his license and registration, § 87(2)(b) reached into his left back pocket. At that point, PO Rosenthal opened the door, removed § 87(2)(b) from the vehicle, and handcuffed § 87(2)(b). § 87(2)(b) said that if he were a white male, he would not be treated this way. He raised his voice, but did not scream. PO Rosenthal repeated his request for § 87(2)(b)'s identification. § 87(2)(b) told PO Rosenthal to retrieve his identification from his back pocket, which PO Rosenthal did. § 87(2)(b) asked Lt. Hopkins, a heavy white male with salt and pepper hair, if he could exit the vehicle and Lt.

Hopkins assented.

Lt. Hopkins explained to § 87(2)(b) that a car similar to § 87(2)(b)'s had been involved in a shooting five days previous just two blocks from where the officers stopped § 87(2)(b) and § 87(2)(b). § 87(2)(b) asked Lt. Hopkins for his name while standing two to five feet away, but Lt. Hopkins neglected to answer. Because of the close proximity, § 87(2)(b) believed that Lt. Hopkins heard this request. Lt. Hopkins took out his handcuffs, at which point § 87(2)(b) informed him that he has a relative who works for the police department. Lt. Hopkins then decided not to handcuff § 87(2)(b). § 87(2)(b) was placed into a marked vehicle and transported to the 73rd Precinct stationhouse. Once there, § 87(2)(b) was taken upstairs to the detective squad and an unidentified male detective showed him a photo of a white car. The detective asked if the vehicle in the photo was § 87(2)(b)'s car. § 87(2)(b) denied that it was. At that point, he was told to wait for § 87(2)(b) to be released. § 87(2)(b) and § 87(2)(b) left the stationhouse without being arrested or summonsed.

Between March 1, 2013, and August 9, 2013, the CCRB placed four calls to § 87(2)(b) to obtain additional information from him about the incident. On August 9, 2013, the undersigned investigator made contact with § 87(2)(b)'s wife, who stated that she would tell § 87(2)(b) to call the CCRB. To date, § 87(2)(b) has not contacted the undersigned investigator.

NYPD Statements:

Subject Officer: CAPT. JOSEPH GULOTTA

- *Capt. Gulotta is a § 87(2)(b).*
- *On August 3, 2012, Capt. Gulotta worked with Lt. Hopkins and PO Rosenthal from 11:00 a.m. to 8:00 p.m. as the commanding officer of the 73rd Precinct. He was in uniform and was assigned to a black Ford Escape.*

Memo Book

Capt. Gulotta, because of his rank, does not keep a memo book.

CCRB Statement

Capt. Gulotta was interviewed at the CCRB on October 4, 2012 (encl. 31b-c). On August 3, 2012, at 12:30 p.m., Lt. Martha Rizzo, the ICO at the 73rd Precinct, called 911 and reported that she witnessed shots fired on the corner of Dumont Avenue and Rockaway Avenue in Brooklyn. Capt. Gulotta was in the 73rd Precinct stationhouse. Capt. Gulotta exited the stationhouse and got into a black Ford Escape with Lt. Hopkins and PO Rosenthal. Lt. Rizzo arrived at the stationhouse and joined the three other officers in the vehicle. Lt. Hopkins drove towards Dumont Avenue and Rockaway Avenue. When the officers arrived at the scene, Capt. Gulotta observed shell casings and confirmed that shots had been fired. Lt. Hopkins turned onto Riverdale Avenue.

Capt. Gulotta noticed a white Volkswagen Jetta illegally parked on Riverdale Avenue, between Thatford Avenue and Osborn Street. The Jetta, now known to belong to § 87(2)(b) was parked approximately two feet away from the curb and was directly in front of a fire hydrant. The NYPD was on the lookout for a white Jetta that had been involved in a mass shooting on July 29, 2012. The license plate of the Jetta involved in the July 29, 2012, shooting was out-of-state. Capt. Gulotta did not remember if the license plate on § 87(2)(b)'s Jetta was out-of-state. § 87(2)(b)'s Jetta matched the description of the body style and year (2000-2008) of the Jetta involved in the July 29, 2012 shooting. There were no suspects in the July 29, 2012, shooting as of August 3, 2012.

At this point, the officers ceased canvassing for the August 3, 2012, shooting to stop the illegally parked Jetta. Lt. Hopkins turned on the turret light and parked behind § 87(2)(b)'s Jetta. All four officers exited the Ford Escape simultaneously. Capt. Gulotta approached the driver's side of the car. PO Rosenthal followed closely behind Capt. Gulotta. Lt. Rizzo and Lt. Hopkins approached the passenger's side of § 87(2)(b)'s Jetta. Capt. Gulotta asked § 87(2)(b) for his identification. § 87(2)(b) refused to provide it. Capt. Gulotta explained to § 87(2)(b) that he was illegally parked and again asked for identification. § 87(2)(b) responded, "I'm not going to fucking give you ID."

Capt. Gulotta asked § 87(2)(b) to step out of the car twice. § 87(2)(b) did not comply with either request. Capt. Gulotta opened the driver's side door and grabbed § 87(2)(b) by the arm in order to remove him from the car. Capt. Gulotta did not hear any conversation between § 87(2)(b) and Lt. Hopkins. Neither Capt. Gulotta nor PO Rosenthal told § 87(2)(b) to "shut the fuck up." Capt. Gulotta did not hear any officer use any profanity. Capt. Gulotta did not hear Lt. Hopkins refuse to provide his name to § 87(2)(b).

Capt. Gulotta handcuffed § 87(2)(b) for the safety of the officers. § 87(2)(b) asked for Capt. Gulotta's name and Capt. Gulotta provided his name. § 87(2)(b) was compliant and was not handcuffed. § 87(2)(b) and § 87(2)(b) were taken to the stationhouse so that § 87(2)(b) could be arrested and processed for refusing to provide his identification. Capt. Gulotta did not return to the stationhouse. Capt. Gulotta resumed canvassing for the August 3, 2012, shooting. After questioning § 87(2)(b) and § 87(2)(b) the detective squad released them.

Subject Officer: LT. JOHN HOPKINS

- *Lt. Hopkins is a § 87(2)(b)*
- *On August 3, 2012, Lt. Hopkins worked as the Special Operations Lieutenant with Capt. Gulotta and PO Rosenthal from 6:45 a.m. to 3:30 p.m. He was in plainclothes and was assigned to an unmarked black Ford SUV.*

Memo Book

According to Lt. Hopkins's memo book (encl. 28-29), at 12:31 p.m., he stopped a 2007 white Volkswagen with New York plates, which fit the description of a vehicle for which officers were looking, at Osborn Street and Riverdale Avenue. At 12:37 p.m., one individual was arrested for unlicensed operation, parking too far away from the curb, and standing too close to a fire hydrant. An investigation by the detective squad followed. Stop and frisk reports were prepared for § 87(2)(b) and § 87(2)(b).

CCRB Statement

Lt. Hopkins was interviewed at the CCRB on September 27, 2012 (encl. 30-31a). Lt. Hopkins was on routine patrol with Capt. Gulotta and PO Rosenthal. There were bulletins posted for officers to be on the lookout for a white 2007 Volkswagen with New York plates that was involved in a shooting on July 29, 2012, approximately two to three blocks from Riverdale Avenue and Thatford Avenue. As Lt. Hopkins drove, Capt. Gulotta noticed that § 87(2)(b)'s vehicle was parked more than 12 inches from the curb in front of a fire hydrant at the northeast corner of Riverdale Avenue and Thatford Avenue. § 87(2)(b)'s vehicle fit the description of the vehicle that was involved in the shooting. The only description that Lt. Hopkins had of the suspects was that they were four black males. Lt. Hopkins did not recall the age of the suspects or how closely § 87(2)(b) and § 87(2)(b) matched the description of the suspects.

Lt. Hopkins backed up his vehicle about six feet behind § 87(2)(b)'s car, at which point Capt. Gulotta and PO Rosenthal exited the vehicle to question § 87(2)(b). Lt. Hopkins continued

to back up the vehicle to get it out of the way of traffic. It took 30-40 seconds for Lt. Hopkins to park. PO Rosenthal approached § 87(2)(b)'s driver's side and Capt. Gulotta approached § 87(2)(b)'s passenger's side. With his windows down, Lt. Hopkins heard § 87(2)(b) refuse two to three requests from PO Rosenthal and Capt. Gulotta to provide his license, registration, and insurance. When Lt. Hopkins exited his vehicle, § 87(2)(b) was already in handcuffs. Lt. Hopkins did not hear PO Rosenthal tell § 87(2)(b) to "shut the fuck up." None of the officers used any profanity during the incident. Lt. Hopkins later obtained § 87(2)(b)'s pedigree information from the detective squad and noted it in his memo book. Lt. Hopkins never saw § 87(2)(b) provide his identification at the scene.

Lt. Hopkins approached the passenger's side of the vehicle and asked § 87(2)(b) to exit the vehicle. § 87(2)(b) complied. Lt. Hopkins asked for § 87(2)(b)'s identification, which § 87(2)(b) provided. § 87(2)(b) requested Lt. Hopkins's name and shield number. Lt. Hopkins provided his name and said that he did not have a shield number. § 87(2)(b) responded, "Everyone has a shield number." The officers called a sector car to transport § 87(2)(b) to the stationhouse for arrest processing and § 87(2)(b) was told to meet § 87(2)(b) at the stationhouse. § 87(2)(b) was questioned by the detective squad and then released.

Subject Officer: PO JOEL ROSENTHAL

- *PO Rosenthal is a § 87(2)(b).*
- *On August 3, 2012, PO Rosenthal worked with Capt. Gulotta and Lt. Hopkins from 7:05 a.m. to 3:40 p.m. He was in plainclothes and was assigned to anticrime in an unmarked black Ford SUV.*

Memo Book

According to PO Rosenthal's memo book (encl. 32-35), at 12:10 p.m., there was a call for assistance at Dumont Avenue and Rockaway Avenue because of shots fired. At 12:31 p.m., he performed a car stop at Osborn Street and Riverdale Avenue for a vehicle matching a description (white 2007 Volkswagen). At 12:37 p.m., there was one person under arrest for unlicensed operation, being parked too close to a fire hydrant, and being parked too far away from the curb. Stop and frisk reports were prepared for § 87(2)(b) and § 87(2)(b).

At 12:47 p.m., PO Rosenthal stopped two males for riding bicycles recklessly at Rockaway Avenue and Dumont Avenue. At 12:57 p.m., there was an arrest on a warrant by SNEU officers. At 1:00 p.m., PO Rosenthal performed a vertical patrol at § 87(2)(b). At 1:15 p.m., he resumed patrol, and at 3:30 p.m., PO Rosenthal returned to the stationhouse for administrative duties.

CCRB Statement

PO Rosenthal was interviewed at the CCRB on October 1, 2012 (encl. 36-37). He corroborated Capt. Gulotta's account of the beginning of the incident, including the report of shots fired. The officers had been notified to be on the lookout for a 2004-2007 white Volkswagen in regards to a shooting at Riverdale Avenue and Rockaway Avenue several days prior. There were variations on the description of the vehicle for which officers were to be on the lookout. At different points in the investigation, they were told to look for vehicles with multiple out-of-state plates and at other times told to look for a Nissan. PO Rosenthal observed § 87(2)(b)'s white 2007 Volkswagen Jetta parked more than 12 inches from the curb directly in front of a fire hydrant. Capt. Gulotta told Lt. Hopkins that they should stop and investigate further.

Lt. Hopkins parked nose-to-nose with § 87(2)(b)'s vehicle. PO Rosenthal and Capt. Gulotta approached § 87(2)(b)'s driver's side and Lt. Hopkins approached the passenger's side.

PO Rosenthal asked for § 87(2)(b)'s identification, but § 87(2)(b) refused. § 87(2)(b) screamed and used profanity, but PO Rosenthal did not remember any specific remarks that § 87(2)(b) made. § 87(2)(b) said he did not have to provide his identification because he did not do anything wrong. PO Rosenthal explained that he stopped § 87(2)(b) because he was parked illegally, he was obstructing vehicular traffic by blocking a travel lane, and his car matched the description of a vehicle that was involved in a shooting. Neither PO Rosenthal nor Capt. Gulotta told § 87(2)(b) to "shut the fuck up" or used any profanity. After § 87(2)(b) refused two requests for identification, PO Rosenthal and Capt. Gulotta asked § 87(2)(b) to exit the vehicle. § 87(2)(b) refused, so PO Rosenthal opened the driver's side door.

Once the door was opened, § 87(2)(b) exited the vehicle. PO Rosenthal handcuffed § 87(2)(b) and placed a call to run § 87(2)(b)'s information. PO Rosenthal did not remember whether he recovered § 87(2)(b)'s identification after he was handcuffed or whether § 87(2)(b) verbally provided his information. A sector car transported § 87(2)(b) to the stationhouse. PO Rosenthal completed stop and frisk reports for § 87(2)(b) and § 87(2)(b) but he did not remember how he obtained the pedigree information for these reports. PO Rosenthal did not see any interaction between Lt. Hopkins and § 87(2)(b). He did not hear § 87(2)(b) ask Lt. Hopkins for his name. No one ever asked PO Rosenthal for his name. § 87(2)(b) asked Capt. Gulotta for his name, and Capt. Gulotta verbally told him his name and gestured to his nameplate. PO Rosenthal planned to arrest § 87(2)(b) for the above violations as well as obstructing governmental administration for obstructing the investigation into the July 29, 2012, shooting. However, § 87(2)(b) was questioned by the detective squad and then released. PO Rosenthal continued to canvass in regards to the shooting, and by the time he finished, § 87(2)(b) had already been released.

Witness Officer: LT. MARTHA RIZZO

- *Lt. Rizzo is a § 87(2)(b).*
- *Lt. Rizzo was off-duty at the time of the incident.*

Memo Book

Lt. Rizzo did not document the incident in her memo book, as she was off duty when the incident occurred.

CCRB Statement

Lt. Rizzo was interviewed at the CCRB on March 25, 2013 (encl. 42b-c). Lt. Rizzo was on her way to work driving her personal vehicle near the corner of Dumont Avenue and Rockaway Avenue in Brooklyn. She was stopped at a red light and observed two black males fire shots at each other. Lt. Rizzo put her car in park and called Central Dispatch. A few minutes later, the two shooters dispersed and ran in opposite directions. Lt. Rizzo drove for a few blocks and observed Capt. Gulotta's black SUV, at which point she left her vehicle and joined Capt. Gulotta, Lt. Hopkins, and PO Rosenthal in the vehicle. The officers canvassed for the two males who were involved in the shooting.

On Riverdale Avenue between Thatford Avenue and Osborn Street, Lt. Rizzo and the other officers noticed § 87(2)(b) parked in a white late-model Volkswagen, which matched the description of a vehicle for which the officers had been on the lookout since the July 29, 2012, shooting. The vehicle's description did not include the state in which it was registered. The perpetrators of that shooting were described as black males, but Lt. Rizzo did not recall any further information about the number of suspects or additional pedigree information. Lt. Rizzo did not recall whether the vehicle was legally parked. The vehicle was not double parked and Lt. Rizzo did not recall whether it was standing at a hydrant. Lt. Rizzo emphasized that the reason

for the stop was because the vehicle matched the description of the vehicle for which the officers were on the lookout.

The officers exited the vehicle. Two officers approached the driver's side of § 87(2)(b)'s vehicle and two approached the passenger's side. Lt. Rizzo approached the passenger's side, but she did not recall who approached with her. Lt. Hopkins asked § 87(2)(b) and § 87(2)(b) to exit the vehicle. § 87(2)(b) asked why he had to exit the vehicle, and Lt. Hopkins stated that the vehicle matched the description of a vehicle that had been used in the commission of a shooting on July 29, 2012. § 87(2)(b) was very argumentative and upset. Lt. Rizzo told § 87(2)(b) to understand that a child had been hit and the officers just wanted to speak with him. § 87(2)(b) responded, "I don't have to understand fucking nothing." § 87(2)(b) and § 87(2)(b) got out of the vehicle, but Lt. Rizzo did not recall the manner in which they exited. She did not see Capt. Gulotta and PO Rosenthal physically remove § 87(2)(b). Lt. Rizzo did not hear PO Rosenthal or Capt. Gulotta tell § 87(2)(b) to "shut the fuck up" or use any profanity.

After the occupants of the vehicle exited, Lt. Hopkins continued to talk to § 87(2)(b). § 87(2)(b) was still argumentative and upset. § 87(2)(b) told him to calm down and said that the officers were just asking questions. Lt. Rizzo did not observe either occupant be handcuffed. One of the officers asked § 87(2)(b) for his identification, but Lt. Rizzo did not remember which. She did not remember whether this request was made before or after § 87(2)(b) exited the vehicle. § 87(2)(b) refused to provide his identification and stated, "Stop fucking harassing me." After several requests, § 87(2)(b) provided his identification. There was no discussion about placing § 87(2)(b) under arrest. After approximately five minutes, another vehicle picked up Lt. Rizzo and she left the scene in order to conduct a show-up at another location.

Witness Officer: SGT. ANTHONY ARMISTEAD

- Sgt. Armistead is a § 87(2)(b).
- On August 3, 2012, Sgt. Armistead worked as the 73rd Precinct patrol supervisor with PO Vishawadia from 6:55 a.m. to 3:52 p.m. He was in uniform and was assigned to marked RMP #3811.

Memo Book

According to Sgt. Armistead's memo book (encl. 38-40), at 1:15 p.m., Sgt. Armistead responded to Riverdale Avenue after the commanding officer had made an arrest. Sgt. Armistead instructed Sector J to transport two black males to the 73rd Precinct stationhouse.

CCRB Statement

Sgt. Armistead was interviewed at the CCRB on September 20, 2012 (encl. 41-42a). He received a request via the division radio to transport an individual who had been placed under arrest by Capt. Gulotta. Sgt. Armistead did not remember who made the transmission, and there was no further information provided over the radio. When Sgt. Armistead arrived, § 87(2)(b) was already in handcuffs and there was another male with him. Sgt. Armistead was not informed about the reason for the arrest. Sgt. Armistead had the officers from Sector J, identified through the investigation as PO Christopher Furegno and PO Scott Walicki, transport § 87(2)(b) to the stationhouse. Sgt. Armistead did not recall hearing either § 87(2)(b) or § 87(2)(b) ask for any officer's name or shield number. He did not hear any officer use any profanity.

Witness Officer: DET. NANCY MALOTA

- Det. Malota is a § 87(2)(b).

- *On August 3, 2012, Det. Malota worked as the domestic violence detective at the 73rd Precinct from 6:00 a.m. to 3:33 p.m. She was in business attire and did not have a partner.*

Memo Book

Det. Malota did not note her interaction with § 87(2)(b) and § 87(2)(b) in her memo book (encl. 42d i-iii).

CCRB Statement

Det. Malota was interviewed at the CCRB on July 30, 2013 (encl. 42d iv-v). While inside of the stationhouse, she received a phone call from patrol officers whom she did not recall informing her that they had a white Jetta that they wanted her to check in regards to the shooting that had occurred on July 29, 2012. Det. Malota did not remember whether anyone notified her that either § 87(2)(b) or § 87(2)(b) was under arrest. She did not know the circumstances leading to the initial stop. After reviewing the SPRINT, Det. Malota stated that she did not receive notification over the radio to respond to the location of the stop.

Det. Malota went outside and looked at § 87(2)(b)'s vehicle, which looked like a late model Jetta. Because this was inconsistent with the description of the car that was used in the commission of the shooting, Det. Malota determined that § 87(2)(b) and § 87(2)(b) were not suspects. Det. Malota briefly and informally spoke to § 87(2)(b) and § 87(2)(b). She did not recall the content of the conversation or what questions she asked. Det. Malota told § 87(2)(b) and § 87(2)(b) that she had no further questions, and did not know who made the decision to release them from the stationhouse.

Witness Officer: PO CHRISTOPHER FUREGNO

- *PO Furegno is a § 87(2)(b)*
- *On August 3, 2012, PO Furegno worked from 7:05 a.m. to 3:40 p.m. with PO Walicki. They were in uniform and were assigned to Sectors J, M, P, and Q in a marked vehicle.*

Witness Officer: PO SCOTT WALICKI

- *PO Walicki is a § 87(2)(b)*
- *On August 3, 2012, PO Walicki worked from 7:05 a.m. to 3:40 p.m. with PO Furegno. They were in uniform and were assigned to Sectors J, M, P, and Q in a marked vehicle.*

Memo Books

According to PO Walicki's memo book (encl. 42d xi-xiv), at 12:30 p.m., he was called to Riverdale Avenue and Osborn Street for a transport for the commanding officer. At 12:40 p.m., PO Walicki resumed patrol.

PO Furegno did not have his memo book on the date of his interview.

CCRB Statements

PO Walicki (encl. 42d xv-xvi) and PO Furegno (encl. 42d xvii-xviii) were interviewed at the CCRB on August 6, 2013. PO Furegno and PO Walicki were called to Riverdale Avenue between Thatford Avenue and Osborn Street in Brooklyn to transport a male or males to the 73rd Precinct stationhouse. The officers did not receive any information about why they were transporting the male(s) or whether the male(s) was/were under arrest. PO Furegno and PO Walicki did not remember to whom they handed off custody of the male(s) at the stationhouse. They did not interact with the male(s) again.

NYPD Documents

SPRINT

According to SPRINT F06805 (encl. 42d xix – 42g), at 12:04 p.m., a female caller stated that there were shots fired and a female was lying by a bus stop in the vicinity of Dumont Avenue and Rockaway Avenue. At 12:05 p.m., EMS was on the scene. At 12:17 p.m., the 73rd Precinct commanding officer reported that an off duty lieutenant confirmed that there were shots fired. At 12:21 p.m., the commanding officer reported that there were no shots fired by or at MOS. At 12:31 p.m., the commanding officer requested the 73rd Precinct detective squad to respond to Osborne Street and Riverdale Avenue in regards to § 87(2)(b) who was stopped at that location. At 12:37 p.m., a sergeant arrived to transport § 87(2)(b) who was under arrest, to the stationhouse. At 12:47 p.m., the commanding officer stopped another person at Rockaway Avenue and Sutter Avenue in regards to the live shooting. At 12:52 p.m., the commanding officer reported that he located a witness who stated that 10 males who were § 87(2)(b) old fired shots and then fled into housing projects.

Command Log

According to the command log (encl. 45), at 12:55 p.m., § 87(2)(b) was logged in as an arrest, but there was no charge listed. At 1:35 p.m., Det. Malota released § 87(2)(b)

Stop and Frisk Reports

A request to the 73rd Precinct for stop and frisk reports in relation to this incident yielded negative results (encl. 44b-e).

MISD Search Results

According to documentation from MISD (encl. 44f-n), at 12:27 p.m., a run on § 87(2)(b)'s license plate indicated that it was valid. A request for § 87(2)(b)'s identification was sent at 12:31:54 p.m. and PO Naomi Gonzalez of the 73rd Precinct returned a response at 12:31:57 p.m., which indicated that § 87(2)(b) did not have any open warrants.

DD5s

According to DD5s completed by members of the detective squad (encl. 46-48), witnesses to the July 29, 2012, shooting provided the following descriptions of the shooter's vehicle: a white 2007-2008 Nissan Altima and a white Nissan Altima with California or Florida plates. The following description of suspects was provided by a witness: a male with a white shirt and red sweatpants with a white logo on the side similar to an Adidas logo. On August 1, 2012, a tip came into the 73rd Precinct that a white four door Jetta with a Florida license plate occupied by four white or Hispanic males peeled out of a CVS parking lot in Elmont, NY. It is unclear how this information relates to the shooting that took place on July 29, 2012.

Other Evidence

An August 2, 2012, article from the blog *Save Brooklyn Now!* (encl. 13) confirmed that the NYPD was seeking a white Volkswagen Jetta that was believed to have been used by the suspects in a shooting on July 29, 2012, in the vicinity of Chester Street and Riverdale Avenue in Brooklyn. This is several blocks from the incident location. The article included a picture of the vehicle.

A § 87(2)(b) article from the § 87(2)(b) (encl. 12) indicated that the police were looking for a white Nissan Altima with Florida license plates in regards to the shooting.

A copy of § 87(2)(b)'s DMV driver's abstract (encl. 49b) reveals that his license is valid and there are no suspensions on it.

Status of Civil Proceedings

- § 87(2)(b) and § 87(2)(b) have not filed a Notice of Claim with the City of New York as of January 18, 2013, with regard to the incident (encl. 50).

§ 87(2)(b)

Civilians' CCRB Histories

- § 87(2)(b)
 - § 87(2)(b)
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 - § 87(2)(b)
 - § 87(2)(b)
- This is the first CCRB complaint filed by § 87(2)(b) (encl. 7).

Subject Officers' CCRB Histories

- Capt. Gulotta has been a member of the service for 21 years and there are no substantiated CCRB allegations against him (encl. 2a-b).
- PO Rosenthal has been a member of the service for five years and there are no substantiated CCRB allegations against him (encl. 3).
- Lt. Hopkins has been a member of the service for 20 years and there is one substantiated CCRB allegation against him (encl. 4-5):
 - In CCRB #200700412, the Board substantiated an allegation of Abuse – Question and/or stop. The department declined to prosecute.

Conclusion

Identification of Subject Officers

Because Capt. Gulotta was the highest ranking officer at the scene, the detention of § 87(2)(b) (Allegation A) is pleaded against him. PO Rosenthal matched the description that § 87(2)(b) provided of the officer who cursed at him. PO Rosenthal also acknowledged that he approached § 87(2)(b)'s window and interacted with him. Therefore, Allegations B and C are pleaded against PO Rosenthal. § 87(2)(b) indicated that the male officer who approached the passenger's side of § 87(2)(b)'s vehicle refused to provide his name. Since Lt. Hopkins acknowledged that he approached the passenger's side of the vehicle with Lt. Rizzo, a female, and because he matched the description of the officer who refused to provide his name to § 87(2)(b) Allegation C is pleaded against Lt. Hopkins. Because PO Rosenthal noted in his memo book that he prepared stop and frisk reports and acknowledged that he requested a warrant check for § 87(2)(b) Allegation D is pleaded against PO Rosenthal.

Investigative Findings and Recommendations

Allegation A – Abuse of Authority: Capt. Joseph Gulotta detained § 87(2)(b) and § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) were transported to the 73rd Precinct stationhouse, questioned about a July 29, 2012 shooting, and released without being summonsed or arrested.

On August 3, 2012, at approximately 12:30 p.m., PO Rosenthal, Capt. Gulotta, Lt.

Hopkins and Lt. Rizzo were canvassing in regards to a shooting that occurred at approximately 12:00 p.m. when they first observed § 87(2)(b)'s vehicle. They believed that his vehicle matched the description of a vehicle involved in a shooting that occurred on July 29, 2012, and ceased canvassing to approach § 87(2)(b)'s vehicle.

PO Rosenthal, Capt. Gulotta and Lt. Hopkins testified that § 87(2)(b) refused to provide identification after they approached his illegally parked vehicle. Lt. Rizzo stated that the officers approached § 87(2)(b)'s vehicle because of the July 29, 2012, shooting and did not recall whether his vehicle was parked illegally.

Capt. Gulotta testified that § 87(2)(b) and § 87(2)(b) were transported to the stationhouse so that § 87(2)(b) could be processed for refusing to provide identification, but PO Rosenthal testified that § 87(2)(b) was released before he could process the arrest. According to Lt. Rizzo, after several requests, § 87(2)(b) provided his identification to the officers at the scene.

PO Furegno, and PO Walicki, who arrived at the scene after the initial stop, both testified that they had no information as to whether § 87(2)(b) was under arrest. Sgt. Armistead believed that § 87(2)(b) was under arrest but did not know the reason.

§ 87(2)(b) was logged into the command log as an arrest but with no corresponding charges listed. There is no entry regarding § 87(2)(b). According to the Sprint report at 12:31 p.m., the detective squad was asked to respond to the incident location, and according to the MISD results, a check on § 87(2)(b)'s identification was performed which showed he had no outstanding warrants. At 12:37 p.m., a sergeant arrived to transport § 87(2)(b) who was under arrest, to the stationhouse.

Det. Malota, who questioned § 87(2)(b) at the stationhouse, received no information about whether § 87(2)(b) was under arrest. A patrol unit informed her that they had a white Jetta that they wanted her to check. She inspected § 87(2)(b)'s vehicle and determined that it did not match the description of the vehicle involved in the July 29, 2012 shooting.

The investigation determined that § 87(2)(b) and § 87(2)(b) were detained and transported to the stationhouse for questioning and not for arrest processing. This determination is based on the omission of an arrest charge in the command log, PO Rosenthal's failure to return to the stationhouse in a timely manner, as well as Det. Malota only recalling that she was notified that patrol had vehicle in which they wanted her to check out.

It is also notable that the officers stopped canvassing with an eyewitness to a shooting that had occurred just 30 minutes prior to stop § 87(2)(b)'s illegally parked vehicle and arrest and transport him back to the stationhouse for refusing to provide his identification.

Moreover, based on Lt. Rizzo's, PO Rosenthal's, the civilians' testimony, and the results of the MISD search, the investigation determined that the officers obtained § 87(2)(b)'s information moments after stopping him. According to the MISD search results, by 12:31 p.m., while § 87(2)(b) was still at the scene of the stop, the officers had already confirmed that § 87(2)(b)'s license plate was valid and that he did not have any open warrants.

Although PO Rosenthal stated that he continued to canvass for a live shooting and § 87(2)(b) was released before he could process the arrest, PO Rosenthal did not return to the stationhouse until several hours later and in the meantime performed multiple unrelated tasks.

Courts have ruled that the fact that a suspect's vehicle matches the description of a vehicle suspected of involvement in a crime provides an objective credible reason to request information. People v. Harris, 660 N.Y.S.2d 792; 1997 N.Y. (encl. 1b-d).

Assuming that § 87(2)(b)'s vehicle matched the description of the vehicle involved in the July 29, 2012, the officers would have only been justified in inquiring as to § 87(2)(b)'s identity and presence at the location, but were not permitted to transport and detain § 87(2)(b) and § 87(2)(b) for questioning at the stationhouse.

§ 87(2)(g)

Allegation B – Discourtesy: PO Joel Rosenthal spoke discourteously to § 87(2)(b)

Allegation C – Abuse of Authority: PO Joel Rosenthal searched § 87(2)(b)

Allegation D – Abuse of Authority: Lt. John Hopkins refused to provide his name to § 87(2)(b)

§ 87(2)(b) alleged that PO Rosenthal told him to “shut the fuck up” and retrieved § 87(2)(b)'s identification from his back pocket without consent. § 87(2)(b) alleged that Lt. Hopkins refused to provide his name upon request. PO Rosenthal denied cursing and the other officers interviewed did not hear PO Rosenthal speak discourteously to § 87(2)(b). § 87(2)(b) indicated that § 87(2)(b) granted the officer permission to go into his pocket and retrieve his identification. PO Rosenthal did not recall whether he obtained § 87(2)(b)'s information verbally or whether he recovered § 87(2)(b)'s identification during a search incident to arrest. Lt. Hopkins testified that § 87(2)(b) did request his name and that he provided it upon request. None of the officers interviewed indicated that Lt. Hopkins refused to provide his name to § 87(2)(b).

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

